UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SRIHARSHA GUDLA

2416 CANDLER CLUB WAY
LITTLE ELM, TX 75068

SAI LAXMI KAULLU,

4103 WOODMONT CIR.
MACUNGIE, PA 18062

SAI DURGAM VASAVI

5515 CARRINGTON PL.
CUMMING, GA 30040

SREE VINDHYA NAGANDLA

43 PALISADES BLVD.
HAWTHORN WOODS, IL 60047

Plaintiffs,

vs.

MARK KOUMANS, ACTING DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE,

20 MASSACHUSETTS AVE. NW
WASHINGTON, D.C. 29529

Defendant

Case No.:

COMPLAINT

I. INTRODUCTION

1. This case presents this Court with the latest in a series of coordinated actions taken by the United States Citizenship and Immigration Service ("Defendant" or "USCIS") to unlawfully delay the adjudication of nonimmigrant visa benefits.

2. Each fiscal year, the Immigration and Nationality Act allows 65,000 initial H-1B visas to be issued to professionals working in mostly the information technology sector. An additional 20,000 initial H-1B visas are available to foreign professionals holding a master's degree.

3. If USCIS approves the H-1B petition, the approved H-1B status is valid for an initial period of up to three years. USCIS may grant extensions for up to an additional three years, such that the total period of the H-1B nonimmigrant's admission in the United States does not exceed six years.

4. The dependents of the H-1B nonimmigrant (i.e. spouse and unmarried children under 21 years of age) are entitled to H-4 status and are subject to the same period of admission and limitations as the H-1B nonimmigrant.

5. At the end of the six-year period, the H-1B and H-4 nonimmigrants generally must depart from the United States unless they: (1) fall within one of the exceptions to the six-year limit; (2) have changed to another nonimmigrant status; or (3) have an approved Form I-140, Petition for Immigrant Worker, which allows them to eventually apply to adjust status to that of a lawful permanent resident ("LPR").

6. For H-1B and H-4 nonimmigrants seeking to adjust their status to or otherwise acquire LPR status though employment-based immigration, an employer generally must file an immigrant visa petition on their half. There are five preference categories for employment based

immigrant visas, EB-1 through EB-5. Generally, EB-2 and EB-3 are most common categories used by employers seeking to permanently hire for H-1B beneficiaries. These require the employer to obtain an approved permanent labor certification ("PERM") from Department of Labor ("DOL") prior to filing an immigration petition with USCIS on behalf of the worker. . The approved PERM certifies that there are insufficient qualified, willing, and able United States workers for the position in the locality.

7. To apply for adjustment to LPR status, the H-1B nonimmigrant must be the beneficiary of an immigrant visa that is immediately available. The Immigration & Nationality Act ("INA") limits the supply of visas available for each fiscal year and also limits the number of available visas for each particular category based upon an annual per-country numerical limit. Presently, the number of available visas issued to nationals of a particular country is capped at seven percent of the total number of immigrant visas each year. This had previously created uncertainty in the workforce as H-1B nonimmigrants would hit their six year limit but still not have the ability to adjust to LPR. This created disruptions to US businesses that employed or utilized the services of H-1B nonimmigrants.

8. Congress enacted provisions in the American Competitiveness in the 21st Century Act ("AC21"), Pub. L. 106–313, title I, §106(a), (b), (Oct. 17, 2000), 114 Stat. 1253, 1254, as amended by Pub. L. 107–273, div. C, title I, §11030A (Nov. 2, 2002), that allow for the extension of H-1B and H-4 status past the sixth year for workers who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications. While this allowed workers and their dependents to stay in the United States, many still left the US because their dependent spouses lacked the ability to work for years on end. Despite the allowance of extensions beyond the sixth year, foreign nationals leaving the US

because the dependent spouse could not work continued to cause interruptions to American businesses.

9. To rectify this issue, DHS issued a final rule to extend eligibility for employment authorization to H-4 dependent spouses of H-1B nonimmigrants remaining in the United States pursuant to extensions of stay based on sections 106(a) and (b) of AC21, and to H-4 nonimmigrants whose H-1B nonimmigrant spouses are beneficiaries of an approved Form I-140. This rule was consistent with the congressional intent expressed in AC21 as this rule encouraged potential H-1B nonimmigrants seeking LPR status and their H-4 dependents to remain in the United States. Through this rule, the H-4 employment authorization document ("H-4 EAD") was created.

10. The benefits conferred by the H-4 EAD regulation are only available to those dependents whose primary H-1B beneficiary is eligible to extend beyond the six year limit by virtue of an approved Form I-140. In doing so, DHS has limited employment authorization to H-4 dependents of H-1B spouses who have taken steps in attaining LPR status. This limitation was appropriate in furthering the congressional goals of retaining high-skilled workers by providing greater incentive to H-1B principals and their spouses who have taken steps to remain in the US until such time as they are admitted as LPRs.

11. Those seeking to obtain an H-4 EAD or continue the H-4 EAD must have an approval and a valid H-4 EAD card in order to have the necessary work authorization. Unlike the H-1B, which allows the H-1B nonimmigrant to work pursuant to a pending H-1B extension, no such rule exists for H-4 EAD. This creates a significant need for H-4 EAD applications to be adjudicated in a timely and expeditious manner.

12. In the past, many H-4 and H-4 EAD applicants would file their H-4 (I-539) and H-4 EAD (I-765) applications concurrently with their spouses H-1B petition. Often times, these cases would be filed in premium processing which would ensure a fifteen day adjudication of the H-1B. Many H-4 and H-4 EAD applicants saw this as a necessary step as H-4 adjudication could take as long as twelve months if adjudicated separately from the H-1B, thus delaying or ending any H-4 EAD work authorization. While there was no requirement to adjudicate the H-4 and H-4 EAD in fifteen days, USCIS had habitually adjudicated the H-4 and H-4 EAD along with the H-1B as the cases required little review.

13. The H-4 extension of status and H-4 EAD adjudication consists of an extremely perfunctory review. For the H-4 extension petition, the beneficiary submits a Form I-539, Application to Extend/Change Nonimmigrant Status. This form is used by primary and derivative beneficiaries for all nonimmigrant visa categories. Applicants pay $370 per beneficiary for the processing of the form. 81 Fed. Reg. 73294 (October 24, 2016). The agency states that the average time spent by its adjudicators processing a Form I-536 is 0.40 hours, or 24 minutes. 81 Fed. Reg. 26925 (May 4, 2016). To process an H-4 extension the adjudicator merely examines the record for a qualifying relationship with the primary H-1B beneficiary. In the vast majority of extension cases the has been done multiple times before.

14. To apply for an H-4 EAD the applicant submits a Form I-765, Application for Employment Authorization. This form is used by all nonimmigrants who are eligible to seek employment authorization and not automatically granted it by the visa category. Applicants pay $410 per application for the processing of the form. 81 Fed. Reg. 73295 (October 24, 2016). The agency states that the average time spent by its adjudicators processing all Form I-765 is 0.20 hours, or 12 minutes. 81 Fed. Reg. 26925 (May 4, 2016).

15. Unlike other Form I-765 adjudications, the only adjudicative facts required to establish eligibility are: an approved H-4; and, the primary beneficiary's approved Form I-140.

16. Due to the synergy of adjudicating multiple petitions using the same facts at the same time and the minimal effort required to adjudicate H-4 and H-4 EAD applications, these petitions were historically adjudicated at the same time as the primary H-1B beneficiary's extension.

17. On February 11, 2019, USCIS announced that effective March 22, 2019, the Service was revising the Form I-539 used to apply for H-4 extensions to include an $85 biometrics services fee and a requirement that anyone filing an I-539 must attend a biometrics appointment and be finger printed for every I-539 filed. This requirement is not required by regulation or statute and was a creation of USCIS not supported by any rule of law.

18. On or about March 1, 2019, USCIS hosted a public engagement teleconference regarding the new I-539 requirements. During this call USCIS recognized the fact that many H-4 and H-4 EAD applications were filed concurrently with a premium processing H-1B in order to obtain an expedited adjudication. USCIS noted that since biometrics would take an average of seventeen days, it was possible that the H-4 and H-4 EAD would still be pending after an H-1B was adjudicated in the fifteen days required for premium processing. USCIS stated that they would take steps to adjudicate these H-4 and H-4 EAD applications in an expeditious manner.

19. Sometime after March 22, 2019, on information and belief, USCIS changed their internal policy of adjudicating H-4 and H-4 EAD applications concurrently with premium processing H-1B petitions and would now begin processing such cases in regular processing separate from the H-1B.

20. An H-4 EAD application cannot be approved without a valid H-4. As of May 31, 2019, USCIS processing times for an H-4 application are as long as eight and a half months.

21. Processing times for the H-4 EAD are currently approximately 5 months. Defendant's intentional and coordinated actions have placed Plaintiffs, and numerous other H-4 and H-4 EAD applicants like Plaintiffs in the position of losing jobs, insurance, driver's licenses, and causing a significant strain on the applicant's personal finances as well as the American businesses that employ them.

22. Both the H-4 extension and the H-4 EAD are nonimmigrant benefits that Congress expected the agency to complete within 30 days. 8 U.S.C. § 1571.

23. This is an action brought pursuant the Administrative Procedure Act, 5 U.S.C. § 702, et. seq., challenging an unlawful delay of agency action by the United States Citizenship and Immigration Services (USCIS) and seeking an order from this Court to demand Defendant USCIS comply with the law and provide a timely adjudication of Plaintiff's nonimmigrant visa applications pursuant to 5 U.S.C. § 706.

II. PARTIES

24. Plaintiffs are all applicants of H-4 and H-4 EAD applications filed with USCIS seeking nonimmigrant benefits. Plaintiffs have each individually filed their H-4 and H-4 EAD applications. Plaintiffs are the spouses of an H-1B applicant that is the beneficiary of an approved employment based immigrant visa that is waiting in the continued backlog to acquire an immigrant visa. Plaintiffs are the type of nonimmigrant dependents DHS considered when creating the H-4 EAD rule in order to comply with the congressional intent of AC21. Defendant has not provided a decision on any of Plaintiff's H-4 or H-4 EAD cases.

25. Plaintiff Sriharsha Gudla's spouse is the beneficiary of an approved employment based immigrant visa (Form I-140) which was approved on February 9, 2015 (SRC1490358837). Plaintiff Gudla is a resident of Texas. Plaintiff Gudla's spouse's H-1B extension was filed on January 14, 2019 (WAC1909650502). This H-1B was originally filed in regular processing, but was upgraded to premium on April 24, 2019. Plaintiff Gudla is an H-4 visa applicant dependent on his wife's H-1B. Plaintiff Gudla is also the applicant for a renewal of his H-4 EAD. Plaintiff Gudla's application to extend H-4 status and EAD application were filed concurrently with his spouse's H-1B petition on January 14, 2019 (WAC1909650519).

26. Plaintiff Gudla's spouse's H-1B was approved on May 1, 2019 and was given a validity period through March 31, 2020. On his prior EAD Plaintiff Gudla had been employed as a customer care center service representative working pursuant to his previous H-4 EAD.

27. Plaintiff Gudla's H-4 application and H-4 EAD application are still pending. Plaintiff Gudla's most recent H-4 EAD expired on May 11, 2019. However, due to Agency Delay, Plaintiff Gudla has been placed on unpaid leave since May 11, 2019. Further Agency delay will lead to Plaintiff Gudla losing his job entirely as well as losing the medical insurance benefits that his company is still providing for his entire family through the end of the year on condition that he is making monthly insurance payments. Plaintiff Gudla's provides insurance for his family which consists of Plaintiff Gudla, his wife, seven year old child, and an eleven month old child. Both of Plaintiff Gudla's children are United States citizens.

28. Plaintiff Sai Laxmi Kallu's spouse is the beneficiary of an approved employment based immigrant visa which was approved on August 10, 2012 (SRC1290310751). Plaintiff Kallu is a resident of Pennsylvania. Plaintiff Kallu's spouse's H-1B extension was filed on March 21, 2019 (LIN1912951638). This H-1B was originally filed in regular processing, but

was upgraded to premium on April 11, 2019. Plaintiff Kallu is an H-4 visa extension applicant dependent on her husband's H-1B. Plaintiff Kallu is also the applicant for a renewal of her H-4 EAD. Plaintiff Kallu's application to extend H-4 status and EAD application were filed concurrently with her spouse's H-1B petition on March 21, 2019 (LIN1912951651).

29. The H-1B extension filed on behalf of Plaintiff Kallu's husband was approved on April 15, 2019. On her previously approved EAD, Plaintiff Kallu was employed as a software developer.

30. Plaintiff Kallu's H-4 application and H-4 EAD application are still pending. Agency delay will lead to Plaintiff Kallu losing her job and driver's license if the Court does not compel the Agency to act.

31. Plaintiff Vasavi Sai Durgam's spouse is the beneficiary of an approved employment based immigrant visa which was approved on July 11, 2013 (SRC1318751304). Plaintiff Durgam is a resident of Georgia. Plaintiff Durgam's spouse's H-1B extension was filed on April 10, 2019 (EAC1914951678). This H-1B was filed in premium processing. Plaintiff Durgam's application to extend H-4 status for her and her dependent child as well as her EAD application were filed concurrently with her spouse's H-1B petition on April 10, 2019 (EAC1914951706).

32. Plaintiff Durgam's spouse's H-1B was approved on April 10, 2019 and given a validity period through July 12, 2022. Plaintiff Durgam currently works on software for an insurance company pursuant to her current H-4 EAD.

33. Plaintiff Durgam's H-4 application and H-4 EAD application are still pending. Agency delay will cause Plaintiff Durgam to be unable to accept a federal government job that

has been offered to her causing significant detriment to her career as well as a risk to her current job if the Court does not compel the Agency to act.

34. Plaintiff Sree Vindhya Nagandla's spouse is the beneficiary of an approved employment based immigrant visa which was approved on July 11, 2018 (LIN1819350674). Mrs. Nagandla is a resident of Illinois. Plaintiff Nagandla's spouse's H-1B extension was filed on April 26, 2019 (LIN1915850363). This H-1B was filed in premium processing. Plaintiff Nagandla is an H-4 visa applicant dependent on her husband's H-1B. Her H-4 visa extension application was also filed with a dependent minor. Mrs. Nagandla is also the applicant for a renewal of her H-4 EAD. Plaintiff Nagandla's application to extend application to extend H-4 status and EAD application were filed concurrently with his spouse's H-1B petition on on April 26, 2019 (LIN1915850401).

35. The H-1B extension filed on behalf of her husband was approved on May 28, 2019. On her previously approved EAD she was employed as a Lead SAP Business Analyst.

36. Plaintiff Nagandla's H-4 application and H-4 EAD application are still pending. Agency delay will lead to Mrs. Nagandla losing her job, driver's license, and her family would be unable to continue to make necessary mortgage payments of the house that is in her name if the Court does not compel the Agency to act.

37. Defendant Mark Koumans is the Acting Director of the United States Citizenship and Immigration Service ("USCIS" or "Defendant"). USCIS is a component of the Department of Homeland Security ("DHS"). DHS is an executive agency of the United States, and an "agency" within the meaning of the APA, 5 U.S.C. § 551(1). DHS assumed responsibility from the Immigration and Nationality Service ("INS" or "Defendant") on March 1, 2003, to

administer responsibilities under the Immigration and Nationality Act (INA) and in particular to fulfill its duties to adjudicate employment-based immigrant and nonimmigrant visa petitions.

III. JURISDICTION

38. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the Constitution, laws, or treaties of the United States. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 2201, as this is a civil action seeking, in addition to other remedies, a declaratory judgment.

39. The United States has waived sovereign immunity, allowing this Court to review challenges to final agency actions and unlawfully withheld action under Administrative Procedure Act ("APA"). 5 U.S.C. § 702. The standards of review for these actions are found in 5 U.S.C. § 706.

IV. VENUE

40. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1), because Defendant is headquartered in this district.

V. PROCEDUAL HISTORY

41. On January 14, 2019, Defendant accepted Plaintiff Gudla's H-4 visa application, issued receipt number WAC1909650519, and accepted $370 for application fees. On January 14, 2019, Defendant also accepted Plaintiff Gudla's H-4 EAD application, issued receipt number WAC1909650533, and accepted $410 for application fees. Defendant has not made a decision on either application.

42. On March 21, 2019, Defendant accepted Plaintiff Kallu's H-4 visa application, issued receipt number LIN1912951651, and accepted $370 for application fees. On March 21, 2019, Defendant also accepted Plaintiff Kallu's H-4 EAD application, issued receipt number

LIN1912951667, and accepted $410 for application fees. Defendant has not made a decision on either application.

43. On April 10, 2019, Defendant accepted Plaintiff Durgam's H-4 visa application filed on behalf of her and her dependent minor child, issued receipt number EAC1914951733, and accepted $540 for application fees for the H-4 application and biometrics fees. On April 10, 2019, Defendant also accepted Plaintiff Durgam's H-4 EAD application, issued receipt number EAC1914951733, and accepted $410 for application fees. Defendant has not made a decision on either application.

44. On April 26, 2019, Defendant accepted Plaintiff Nagandla's H-4 visa application filed on behalf of her and her dependent minor child, issued receipt number LIN1915850375, and accepted $455 for application fees for the H-4 application and biometrics fees. On April 26, 2019, Defendant also accepted Plaintiff Nagandla's H-4 EAD application, issued receipt number LIN1915850401, and accepted $410 for application fees. Defendant has not made a decision on either application.

VI. LEGAL BACKGROUND

A. ADMINISTRATIVE PROCEDURE ACT

45. Federal agencies must comply with the Administrative Procedure Act ("APA") when crafting and enforcing decisions, regulations, legislative rules. 5 U.S.C. § 553.

46. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

B. IMMIGRATION AND NATIONALITY ACT

47. The Immigration and Nationality Act (INA) of 1990 separates employment-based visas into two categories: nonimmigrant (temporary) and immigrant (permanent, or green card). *See* 8 U.S.C. §§ 1101(a)(15), 1153 and 1182. Generally speaking each nonimmigrant visa has a corresponding immigrant visa category. *See id.*

48. Professional workers (requiring a bachelor's, master's degree, or equivalent to such degrees) can temporarily enter and work for a United States employer using an H-1B visa. 8 U.S.C. § 1101(a)(15)(H)(i)(b). Spouses and minor children of such H-1B workers are permitted to enter the United States through 8 U.S.C. § 1101(a)(15)(H) which also allows for entry of "the alien spouse and minor children of such alien specified in this paragraph if accompanying him or following to join him."

49. H-4 and H-4 EAD are nonimmigrant benefits as defined in the INA.

VII. CAUSE OF ACTION

COUNT I

(Violation of the Administrative Procedure Act for delay of H-4 application processing)

50. Plaintiffs re-allege all allegations herein as though restated here.

51. Plaintiffs have been waiting an average of seventy-eight days for decisions on pending H-4 applications.

52. This is an unreasonable delay.

53. The Administrative Procedure Act ("APA") requires the Agency to make a decision on Plaintiffs' Applications "within a reasonable amount of time." 5 U.S.C. § 555(b).

54. Congressional policy indicates that all nonimmigrant visa applications should be decided within 30 days:

> It is the sense of Congress that the processing of … a petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition.

8 U.S.C. § 1571(b).

55. This is an unreasonable delay under the five factors laid out in *Telecommunications Research & Action Ctr. v. FCC* ("*TRAC*"), 750 F.2d 70 (D.C. Cir. 1984). Those factors comprise:

> (1) "the time an agency takes to make a decision should be governed by a 'rule of reason' "; (2) "[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act"; (3) "the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation"; (4) "the effect of expediting delayed actions on agency activity of a higher or competing priority . . . [and] the extent of the interests prejudiced by the delay"; and (5) "a finding of unreasonableness does not require a finding of impropriety by the agency."

56. First, USCIS has no rule of reason that governs when it makes decisions on H-4 visa applications. To the extent that Defendant has a rule of reason, its current delay on Plaintiffs' H-4 applications violates any such rule because the delay of the H-4 causes subsequent delay of H-4 EAD applications and impacts driver's license eligibility, and Agency delay is not commensurate with the amount of work required to process these applications. This factor weighs in favor of compelling agency action.

57. Moreover, Defendant takes fees from applicants when applying for H-4 visa applications in exchange for processing the applications. Defendant sets the fee rate based upon the cost it incurs to process visa and benefit applications in a timely fashion. Defendant cannot defend its actions by alleging a lack of resources when it charges fees to pay for resources needed to fulfil its statutory duty.

58. Second, Congress has provided content to any "rule of reason" by declaring the Agency should act on nonimmigrant applications within 30 days. 8 U.S.C. § 1571(b). USCIS attempts to comport with this legislative aspiration. *See, e.g., Shihuan Cheng v. Baran*, No. 17-2001, 2017 WL 3326451, at *4 (C.D. Cal. Aug. 3, 2017). Thus, Congress indicates it should take 30 days to act on nonimmigrant visa applications and Defendant purports to follow this legislative aspiration. Because Congress has indicated a period of 30 days, Defendant follows such legislative aspiration in this context, and Plaintiffs' H-4 applications have been pending outside this timeline, this factor weighs in favor of compelling agency action.

59. Third, the Agency's delay impacts human health and welfare, not merely economic interests.

60. Fourth, compelling agency action here would have no effect on a USCIS activity of a higher or competing priority.

61. The current delay of Plaintiff's petitions is not due to a lack of agency resources because USCIS has historically processed these cases within 15 days or at the very least simultaneously with the H-1B when the two were filed concurrently. Defendant sets the fees it charges to pay for personnel to process petitions in a timely fashion.

62. Compelling agency action on Plaintiffs' H-4 applications would not come at the expense of agency action in similar cases because similar cases are being adjudicated in shorter period of time and the Agency has historically adjudicated H-4 applications simultaneously with H-1B petitions when the two were filed concurrently.

63. It strains credulity to say compelling government action to make a decision would only put Plaintiffs' applications to the front of the line. *See* TRAC, 750 F.2d at 80 (nothing courts should consider the prejudice to the agency's claimed interest). By every metric, the

"line" for H-4 processing should not exist beyond thirty days. These are not fact intensive petitions and Agency review should not be too extensive. Defendant has intentionally delayed the processing of H-4 applications that are filed with H-1B petitions in a completely arbitrary and capricious change in adjudication policy. Even without premium processing, previous H-4 and H-4 EAD applications were approved simultaneously with the H-1B. This factor, therefore, weighs in favor of compelling agency action.

64. Finally, while the circumstantial evidence of impropriety is palpable, this Court need not find such evidence to find the delay is unreasonable.

65. Each TRAC factor weighs in favor of ordering the Agency to issue a decision on Plaintiffs' applications; thus, Defendant's delay is arbitrary and capricious under 5 U.S.C. § 706.

66. Plaintiff demands discovery from Defendant to develop the administrative record, and establish his delay is unlawful, intentional, and targeted at a specific and identifiable group. This includes document discover, interrogatories, and depositions of Defendant Koumans, USCIS Chief Counsel Craig Symons, California Service Center Director, Vermont Service Center Director, Nebraska Service Center Director, and others.

67. This delay is not substantially justified.

COUNT 2

(Violation of the Administrative Procedure Act for delay of H-4 application processing)

68. Plaintiffs re-allege all allegations herein as though restated here.

69. Plaintiffs have been waiting an average of seventy-eight days for decisions on pending H-4 EAD applications.

70. This is an unreasonable delay.

71. The Administrative Procedure Act ("APA") requires the Agency to make a decision on Plaintiffs' Applications "within a reasonable amount of time." 5 U.S.C. § 555(b).

72. Congressional policy indicates that all nonimmigrant visa applications should be decided within 30 days:

> It is the sense of Congress that the processing of … a petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition.

8 U.S.C. § 1571(b).

73. This is an unreasonable delay under the five factors laid out in *Telecommunications Research & Action Ctr. v. FCC* ("*TRAC*"), 750 F.2d 70 (D.C. Cir. 1984). Those factors comprise:

> (1) "the time an agency takes to make a decision should be governed by a 'rule of reason' "; (2) "[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act"; (3) "the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation"; (4) "the effect of expediting delayed actions on agency activity of a higher or competing priority . . . [and] the extent of the interests prejudiced by the delay"; and (5) "a finding of unreasonableness does not require a finding of impropriety by the agency."

74. First, USCIS has no rule of reason that governs when it makes decisions on H-4 EAD applications. To the extent that Defendant has a rule of reason, its current delay on Plaintiffs' H-4 EAD violates any such rule because the delay of the H-4 EADs can lead and has led to several months of work eligibility, delays in potential start times for employees, creates uncertainty for businesses, creates uncertainty for families both financially and with regard to employment related benefits such as insurance, and Agency delay is not commensurate with the amount of work required to process these applications. This factor weighs in favor of compelling agency action.

75. Moreover, Defendant takes fees from applicants when applying for H-4 EADs in exchange for processing the applications. Defendant sets the fee rate based upon the cost it incurs to process visa and benefit applications in a timely fashion. Defendant cannot defend its actions by alleging a lack of resources when it charges fees to pay for resources needed to fulfil its statutory duty.

76. Second, Congress has provided content to any "rule of reason" by declaring the Agency should act on nonimmigrant applications within 30 days. 8 U.S.C. § 1571(b). USCIS attempts to comport with this legislative aspiration. *See, e.g., Shihuan Cheng v. Baran*, No. 17-2001, 2017 WL 3326451, at *4 (C.D. Cal. Aug. 3, 2017). Thus, Congress indicates it should take 30 days to act on nonimmigrant visa applications and Defendant purports to follow this legislative aspiration. Because Congress has indicated a period of 30 days, Defendant follows such legislative aspiration in this context, and Plaintiffs' H-4 EAD applications have been pending outside this timeline, this factor weighs in favor of compelling agency action.

77. Third, the Agency's delay impacts human health and welfare, not merely economic interests. Delay can lead to Applicants losing their employment based insurance.

78. Fourth, compelling agency action here would have no effect on a USCIS activity of a higher or competing priority.

79. The current delay of Plaintiff's petitions is not due to a lack of agency resources because USCIS has historically processed these cases within 15 days or at the very least simultaneously with the H-1B when filed concurrently. Defendant sets the fees it charges to pay for personnel to process petitions in a timely fashion.

80. Compelling agency action on Plaintiffs' H-4 EAD applications would not come at the expense of agency action in similar cases because similar cases are being adjudicated in

shorter period of time and the Agency has historically adjudicated H-4 EAD applications simultaneously with H-1B petitions when the two were filed concurrently.

81. It strains credulity to say compelling government action to make a decision would only put Plaintiffs' applications to the front of the line. *See* TRAC, 750 F.2d at 80 (nothing courts should consider the prejudice to the agency's claimed interest). By every metric, the "line" for H-4 EAD processing should not exist beyond thirty days. These are not fact intensive petitions and Agency review should not be too extensive. Defendant has intentionally delayed the processing of H-4 EAD applications that are filed with H-1B petitions in a completely arbitrary and capricious change in adjudication policy. Even without premium processing, previous H-4 and H-4 EAD applications were approved simultaneously with the H-1B. This factor, therefore, weighs in favor of compelling agency action.

82. Finally, while the circumstantial evidence of impropriety is palpable, this Court need not find such evidence to find the delay is unreasonable.

83. Each TRAC factor weighs in favor of ordering the Agency to issue a decision on Plaintiffs' applications; thus, Defendant's delay is arbitrary and capricious under 5 U.S.C. § 706.

84. Plaintiff demands discovery from Defendant to develop the administrative record, and establish his delay is unlawful, intentional, and targeted at a specific and identifiable group. This includes document discover, interrogatories, and depositions of Defendant Koumans, USCIS Chief Counsel Craig Symons, California Service Center Director, Vermont Service Center Director, Nebraska Service Center Director, and others.

85. This delay is not substantially justified.

CLAIM FOR EQUAL ACCESS TO JUSTICE ACT FEES

86. Plaintiffs re-allege all allegations contained herein.

87. Defendant's current delay is substantially unjustified under the APA.

88. Plaintiffs are otherwise qualified for fees under the Equal Access to Justice Act.

89. Plaintiffs are entitled to reasonable attorney's fees under the Equal Access to Justice Act.

PRAYER FOR RELIEF

90. Plaintiffs pray that this Court will:

91. Enter an order compelling the Agency to make a decision on all of Plaintiffs' Forms I-539 Application to Extend/Change Nonimmigrant Status and Forms I-765 Application for Employment Authorization.

92. Declare a delay in adjudication of a nonimmigrant visa petition per se unreasonable;

93. Order USCIS to pay reasonable attorney's fees; and

94. Enter and issue other relief that this Court deems just and proper.

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